

December 16, 2011

David M. Fleishman  
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Atascadero, CA 93422

Re: Your Request for Advice  
**Our File No. A-11-221**

Dear Mr. Fleishman:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) There are other bodies of law, separate and apart from the Act’s conflict-of-interest provisions, which may apply to your situation. We urge you to check with the Attorney General’s office to determine whether any other laws are applicable in light of the facts you present.

### **QUESTION**

Is real property in which two city council members have an economic interest indirectly involved in decisions to amend the general plan under Regulation 18704.2(b)(3)?

### **CONCLUSION**

No. Regulation 18704.2(b)(3) sets forth an exception to the general rule that real property located within 500 feet of the boundaries of property that is the subject of a governmental decision is directly involved in the decision. The proposed decisions to amend the city’s general plan do not meet the requirements of this exception, and the real property is therefore directly involved in a decision to amend the general plan.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## **FACTS**

As City Attorney for the City of Pismo Beach, you ask advice on behalf of two council members regarding the council members' potential conflicts of interest.

At an upcoming city council meeting, the council will be considering amendments to the city's general plan, local coastal plan, and zoning codes for nine planning areas under the general plan that comprise a significant portion of the northern portion of the city. One city council member has an economic interest in real property that includes a common area located within 500 feet of real property that is the subject of one or more general plan decisions. The other council member owns a residence located within 500 feet of at least one of the parcels that is the subject of these decisions.

One of the general plan amendments would change the designation of parcels located within 500 feet of each of the council members' real property from "open space" to "low density residential" or "planned residential." This change would permit intensification of use on two of the larger parcels.

## **ANALYSIS**

You have determined that each of the council members is a public official, will be participating in making a governmental decision and has an economic interest in real property. You ask only whether the real property is directly or indirectly involved in city council decisions to amend the general plan. Thus, we limit our analysis to this question.

The Act's conflict of interest provisions are designed to ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interest of persons who have supported them. (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision when it is "reasonably foreseeable" that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step analytical framework to determine whether a public official has a disqualifying conflict of interest in a particular governmental decision. (See Regulation 18700(b)(1)-(8).)

Your question is confined to Step Four, in which an official must determine whether his or her real property is directly or indirectly involved in a governmental decision. (Regulation 18704.2). More specifically, you ask whether the "general plan exception" of Regulation 18704.2(b)(3) applies, so that the council members' real property would be deemed indirectly involved.

Under Regulation 18704.2(a)(1), real property in which a public official has an economic interest is considered directly involved if the property is located in or within 500 feet of the boundaries of the property that is the subject of the governmental decision. However, Regulation 18704.2(b)(3) contains an exception, as follows:

“(b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:

{ . . . }

“(3) The decision solely concerns the adoption or amendment of a general plan and *all* of the following apply:

“(A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person representing either the public official or an economic interest of the public official.

“(B) The decision requires a further decision or decisions by the public official’s agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

“(C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not “concern an identifiable parcel or parcels” solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency’s jurisdiction and economic interests of the official are not singled out.

“(D) The decision does not concern the agency’s prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.” (Emphasis added.)

You ask whether the exception articulated in this regulation applies to decisions to amend the city’s general plan. You have expressed two concerns: (1) whether a decision to amend the general plan “solely concerns” the amendment if rezoning decisions will be made “concurrently” at the same meeting, and (2) whether the decision to amend the general plan concerns “identifiable” parcels.

Under Regulation 18704.2(b)(3), real property is indirectly involved in a decision to amend a general plan if the decision solely concerns the amendment. Under the Act's conflict-of-interest provisions, each governmental decision is analyzed separately to determine whether a public official may participate in the decision. You indicate that a general plan amendment and a zoning amendment will be considered "concurrently" at the same city council meeting. This implies that two decisions will be made: one to amend the general plan and another to amend zoning. These decisions appear to be separate and discreet. Accordingly, the decision that involves an amendment of the general plan "solely" concerns the amendment of the general plan.

However, under subdivision (b)(3)(C) of Regulation 18704.2, real property is indirectly involved only if the decision does not concern an identifiable parcel or parcels. This subdivision also provides that a decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction. Under your facts, the parcels are identified in the proposed amendment and the maps included in the amendment do not depict all parcels located within the city's jurisdiction. Accordingly, the real property in which the council members have an economic interest is directly involved in a decision to amend the general plan.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl